

Even settling harassment cases costs a fortune

There are many compelling reasons to prevent sexual harassment and stop it if it occurs. One of the most practical reasons: Harassment cases are very expensive to resolve, whether in court or with a settlement.

If management seems not to take harassment seriously, share this case with them

May and Phyu both work for the U.S. Postal Service in Daly City, Calif. The women alleged that their supervisor, Ronald, restrained them against their will; engaged in offensive touching, grabbing and kissing; and made lewd, sexual and aggressive comments.

May alleged that Ronald told her soon after she began working for him that he “loved her” and wanted to date her. She told him she was married and not interested. That didn’t stop his behavior; he began sniffing and kissing her hair. This escalated into forced kisses. She reported the misbehavior to management. Ronald told co-workers that May would be fired for reporting him.

Phyu reported similar unwanted attention from Ronald. When both women were forced to continue working around Ronald, they sued.

Now the USPS has settled the case, with payments of \$192,000 to each woman, plus \$215,000 to their attorney. It will also have to keep Ronald away from the women. (*Zar, et al., v. USPS, ND CA, 2019*)

In this case, two women separately alleged similar behavior from the same supervisor. The post office may have felt justified in concluding that May’s report wasn’t enough to fire Ronald. However, when Phyu came forward, that should have been a signal to reconsider—especially since the alleged harasser was a supervisor.

Clear harassment policies, reporting procedures protect both victims and employers

Employers are required to prevent sexual harassment and other forms of harassment. They must have policies forbidding harassment, plus clear systems employees can use to report it.

Together, those two employer obligations should, in most cases, prevent or stop harassment before it becomes severe and pervasive. And if the harasser isn’t a supervisor, employers generally will not be held liable if the policy and complaint process stops harassment.

Employers sometimes assume that the safest course of action is to fire any employee accused of harassment. But that can be a painful choice if the employee is hard to replace or is otherwise a good worker. As long as your punishment fits the harassment crime, you don’t have to terminate.

It’s fine to offer second chances, as long as you don’t tolerate any repetition

Take this other recent case for example. Amanda worked for the Texas Health and Human Services Commission, determining client eligibility for Medicaid programs. She had access to a database to verify the

backgrounds and financial information of applicants. The commission's employee handbook and policies specifically said that the information in the database was confidential and could only be used for work purposes. Employees were warned that using it for any other reason was a dischargeable offense.

Amanda and a co-worker complained to management that a male co-worker was creating a sexually hostile environment. They both claimed he commented on their figures, his marital problems and sexually oriented TV programs. He allegedly expressed his desire to enter into a relationship with younger women.

The commission investigated and concluded the women had reported harassment that violated the organization's standards. It reprimanded the co-worker and moved him to a different office.

One day, Amanda found a dog tied up outside the office; a tag on its collar showed a phone number. She entered the number into the database to try to locate the owner. A co-worker told a supervisor, who contacted HR.

HR offered Amanda a chance to explain why she should not be fired. That's when she and the co-worker who previously complained about harassment repeated their claims again. The co-worker said the man had told her he wanted to "jump her bones."

The employer immediately removed the alleged harasser from the building, placed him on emergency leave and changed the office locks. He was fired shortly afterward.

But Amanda was also fired for improperly accessing the database. She sued, alleging she had been forced to work in a sexually hostile environment and that the commission should have fired the harasser the first time she complained. She alleged she had been fired for reporting harassment.

The court tossed out her lawsuit. It reasoned that the commission's initial action was reasonably calculated to stop the harassment Amanda had reported. When she reported it again, the man was fired. Both actions were within reasonable options available to an employer.

It also noted that while Amanda believed she had been targeted in retaliation, her co-worker who reported harassment wasn't punished. Therefore, it was unlikely that Amanda had been fired for complaining instead of misusing the database. (*Abbood v. Texas Health and Human Services Commission*, 5th Cir., 2019)